

electric companies, separate street lighting systems, telephone companies, cable companies, one or more competitive access providers, fire alarm and communications systems, lines for traffic signals, lines for police communication systems, "distance learning" lines for educational institutions, plus private lines for individual businesses. Many utility poles are 30 to 40 years old and simply were not designed with the current intensive uses in mind. Most utility poles in Michigan are owned by the electric utility. Several of the MIT Communities (including Detroit and Grand Rapids) own and operate their own electric utility, street lighting system or both, and thus own the poles on which some or all utility lines are placed. These communities and the state's major private electric utilities all confirm the serious congestion of the poles and conduits.

As an example, in the City of Detroit it is not possible to add a communications line on most streets without replacing some of the utility poles. This is because the space on the poles is used up (the bottom-most wire is already at the minimum height clearance allowed by law). This situation is particularly acute at street corners and intersections where two sets of utility lines meet and cross, thus roughly doubling the need for space on the poles. The problem is so acute that in order to build the present cable system serving Detroit, state law had to be changed to lower the clearance height for utility wires!

It can cost up to \$20,000 per pole to replace existing poles with taller poles, depending on the number of lines, cross-arms, and appliances (such as transformers, switches, circuit breakers and capacitors) on the pole.

The problem is equally acute with underground lines in central cities and other highly developed areas. Often in such areas all utility lines are required to be underground. However, there are only a limited number of existing underground conduits in which such lines can be placed. It is extremely expensive and disruptive to excavate the streets to install new underground conduit.

The local franchising and approval process can and does address these issues. For example, many local governments expressly resolve the problem of priorities in congested areas by providing in franchises that a franchise “does not establish any priority for the use of the public rights-of-way by the franchisee or by any present or future franchisees or other permit holders.” Such franchises often go on to provide that “in the event of any dispute as to the priority of use of the public rights-of-way, the first priority shall be to the public generally, the second priority to municipality, county, the State and its political subdivisions in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the municipality.” (emphasis supplied).

One purpose of this kind of language is to help prevent claims by incumbent franchisees that they have vested rights that take precedence over later (competing) franchisees who need to place lines in the right-of-way. Such provisions reflect the fact that the rights-of-way are publicly owned and managed by the municipalities for the public benefit. Thus, no private entity should acquire a vested right to exclude or place high barriers to entry on subsequent providers. For example, this would help prevent an existing user from claiming that the full incremental cost of higher new poles or additional underground conduit must be borne by a new, competing provider.

All the preceding issues depend on unique local facts and circumstances as to the existing uses, future plans, and existing laws and agreements with respect to the rights-of-way. Because of the peculiarly local nature of these concerns, they are best addressed at the local level through the pre-certification process.

E. Disruption Caused by Construction of the New Open Video System: The construction by telephone companies of open video delivery systems will disrupt both public and private property. Because of their uniquely local nature, there is no way the public can be adequately protected on these issues by this Commission. Again, the telephone companies comment more on this issue, and to correct this omission MIT Communities note the following.

1. Construction Generally: Many local exchange carriers will construct a wholly independent open video system which will be in addition to existing telephone and cable systems. Those telephone companies that construct a combined video/telephone system will have to completely reconstruct and add to their existing telephone infrastructure.

The former approach involves the addition of an entirely new layer of utility infrastructure to that currently in place. The latter approach will entail a complete rebuilding of the existing telephone company infrastructure. In addition, facilities-based competition for telephone service will result in the construction of an additional telephone system (such as by Teleport or Metropolitan Fiber Systems) and/or an extensive rebuild by the cable companies of existing cable systems so that they can provide telephone service as well.

This construction or reconstruction literally may involve essentially every street and highway in the MIT Communities as well as many tens of thousands of miles of easements on private property. There will be major disruptions with large numbers of utility construction vehicles present over a period of years to relocate existing utility lines to make space for new construction, to add new poles where necessary for new aerial lines, and to dig and trench the public streets for underground lines (as is required in many areas).

Similar construction is required on private utility easements causing the additional serious disruptions of trimming or removal of trees to make way for additional lines; disruptions by line trucks entering back yards to add poles and string lines; and the serious disruption that occurs in residential areas where utility lines have to be placed underground. In this regard, most subdivisions constructed since the 1960's require all utility lines to be underground. Adding or rebuilding lines in these subdivisions entails major work, including opening the public streets, digging trenches across people's lawns and the removal or destruction of yard buildings, garages, shrubs, plantings and trees, and interference with walkways and driveways.

One of the principal issues to be dealt with is the coordinating of such construction. For example, if the cable company is proposing to rebuild its system (e.g., so as to provide telephone service) in much the same time frame as the telephone company is proposing to build an open video system, a municipality may require coordination of the two projects so that the construction can all be done at once and there is a minimum disruption to the public.

A similar concern arises in the rebuilding of streets in which major utility construction is located. If streets are going to be rebuilt, municipalities may want all underground (or even aerial) construction done at the same time so that a highway rebuilt at substantial cost is not torn up by the cable company or telephone company a short time later to install or rebuild a video or telephone system. This often is addressed by franchise provisions which require coordination or prevent the reopening of streets that have been newly resurfaced for a period of time. It cannot be addressed effectively at the federal level.

2. Construction on Private Property: Only local governments can establish standards and procedures for the construction or reconstruction of utility lines across private properties.

For example, a significant issue for home owners is tree trimming, which occurs when lines are strung or rebuilt. Utility tree cutting can -- and has -- lead to massive complaints by citizens to local community officials. For this reason, many municipal franchises have specific requirements with respect to tree trimming, such as requiring notice to or consent of property owners. The importance of this issue and the specifics of it vary substantially from community to community and thus can only be addressed effectively at the local level.

3. Insurance and Indemnity: Insurance and indemnity issues are of major importance for municipalities. This Commission has focused on the benefits that might occur from OVS. Municipalities have, in addition, a different and unique concern: Making sure that construction and operation of massive facilities in their

rights-of-way do not expose them and their residents to significant liability. Municipalities have to ensure to the maximum extent possible that the risks and liabilities that might occur to them and their residents from construction placement and operation of facilities in the rights-of-way are minimized. This is important for municipalities because they cannot afford to let their general fund and ability to provide police, fire and other vital services to be affected by liabilities (of potentially large proportions) that can occur from errors, accidents or omissions in the rights-of-way.

Municipalities have major reasons to be concerned in this regard. Not only are major accidents and injuries possible in the rights-of-way, but the municipality is often the “deep pocket” to whom plaintiffs look for damages, especially if a cable company or telephone company is thinly capitalized or has structured its operations so that it is effectively insulated from liability.

In this regard, MIT Communities point out that the 1996 Telecommunications Act may entice fly-by-night, shoestring or other impecunious entities to erect OVS systems. The cities must take all measures necessary to make sure that if a major liability claim occurs, they and their residents are not exposed to liability if such a new thinly capitalized entity has no assets or should otherwise disappear.

For these types of reasons, municipalities typically have major insurance and indemnity provisions in their franchises. Typical provisions include not only large amounts of insurance (e.g. \$10 million) but (a) provisions specifying the maximum deductible (so that the \$10 million policy cannot be subverted by having a \$9 million

deductible); (b) quality standards such that only policies from financially sound insurance companies receiving a high rating by the major insurance rating agencies are acceptable; (c) specifications of the types of insurance coverage that are required (for example, mandating coverage for underground construction claims and broadcasters liability coverage (suits) which are typically excluded from conventional policies unless added by rider); (d) requiring the municipality and its agents to be additional named insureds; (e) requiring copies of policies to be kept on file with the municipality; (f) requiring 60 days notice of cancellation or significant modification of the policy; (g) allowing independent counsel to represent the municipality, especially in the event of cross-claims between the municipality and the provider.

These provisions are, and have been, provided for by municipalities in their franchises for years. They are essential for municipalities and their residents to be protected. They affirmatively show one of the major reasons why Congress expressly stated that municipalities maintain control of their rights-of-way for OVS and why local franchises are required.

4. Home Wiring: Home wiring raises major concerns which, again, can be addressed only at the local level. These include compliance with applicable building and electric codes and modifications of them where necessary. Often inspections have shown lack of compliance on significant safety issues, such as the grounding of the home wiring.

Related issues, such as service technicians entering most homes in the community to make the installations, raise significant issues of safety and public concern. Preventative measures include franchise provisions making sure that the installation personnel have undergone security checks, are bonded, and have appropriate identification to weed out installers who might engage in thefts, assaults, or other inappropriate activity. This also helps prevent unauthorized people from gaining entry to residences by claiming that they are “the phone company cable installer.” And there may be provision for notifying the municipality and police department of the construction program so that apprehensive residents can call and determine the bonafides of an installer.

5. Regulations Suggested: These construction and street-related issues frequently are addressed in cable and telecommunications franchises. They both show why local approval for the new telephone open video delivery systems is required as a matter of sound policy.

The Commission should adopt regulations similar to those attached in Appendix 1 which provide for prospective OVS providers to obtain consent(s) from local authorities to utilize the public rights-of-way prior to the Commission granting certification approval. Such pre-certification can include the compensation component for the use of the rights-of-way consistent with the 1996 Act. In this regard, the MIT Communities support the comments of National League of Cities, Texas Cities, and the Below-Named Political Subdivisions of the State of Minnesota regarding fees paid by OVS operators to use the local rights-of-way.

MIT Communities strongly believe that local approval will not delay the provision of open video services by telephone companies. The communities want competition in the delivery of such services provided there are adequate protections for them and their residents. They have no reason to delay the certification process.

MIT Communities want competition in the provision of video services for the same reasons Congress and this Commission do--to obtain the benefits it brings in services provided, rates and customer service, among other things. One of the larger disappointments for many municipalities has been the quick evolution of cable into a monopoly. Many of MIT Communities have been disappointed to find out that they could not even get a second cable company to bid on providing service in competition with the incumbent provider.<sup>8</sup>

For similar reasons, the residents of MIT Communities generally look favorably on telephone company provision of video services where this will create a true choice in wire-based video providers. The MIT Communities desire to partner with the Commission in allowing subscribers to benefit from OVS service and not bear undue risks and burdens.

## **V. PEG OBLIGATIONS OF OVS OPERATORS**

A. Match or Negotiate: The Act requires the Commission to impose PEG obligations that to the extent possible "are no greater or lesser" than those of the incumbent cable operator. As some of the other municipal commentators (e.g., National League of

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<sup>8</sup> There have been almost no overbuilds in the cable business, and the "most aggressive overbuilder has now left the business." "Overbuilder FPL Finally Sells Out", *Multichannel News*, March 6, 1995, p. 61.

Cities) note, an OVS operator should have the option to either match the requirement of the existing cable operator or to negotiate different requirements which are equivalent (and thus satisfy the “no greater or lesser” requirement).

Allowing the cable operator to simply duplicate the requirements of the existing cable operator assures that the obligations are identical. It is administratively easy and can quickly and efficiently be done by the OVS operator (thus fulfilling the 1996 Act’s preference for minimal regulation). At the same time the ability to negotiate differing (but overall equivalent) requirements with the local franchising authority (and if necessary with the local cable operator) provides needed flexibility. For example, the MIT Communities believe that in many situations both the OVS operator and the municipality will find it mutually advantageous to negotiate different requirements. For example, a community might find it desirable to consolidate two PEG channels due to the savings in operating costs that may result but lacks the funds for the studio expansion and additional studio equipment for such a required change. In these circumstances it is easy to contemplate a “win-win” situation where the OVS operator contributes the funds necessary for the studio expansion and equipment and in return gains an additional channel.

B. Certification Process: As a part of the initial certification process, an OVS operator must submit an unequivocal commitment to match the PEG requirements of the existing cable operator. The Commission’s rules should specify that this certification has to be served on each local franchising authority on or before its submission to the Commission and that the certification should be deemed, in effect, a “unilateral offer” by the OVS operator which may be accepted in any fashion by the local franchising authority. As such,

it will form a contract between the local franchising authority and the OVS operator such that it may be enforced locally in the same fashion as any other contract and thus with a minimum of regulatory entanglements.

In addition, by viewing the document as a contract, it will allow the parties (OVS operator and individual franchising authority) to modify it via the "negotiate" option at any time should they deem this appropriate without involving the Commission.

C. Regional PEG Requirements Not Allowed: The Commission questioned whether OVS systems serving multiple franchise areas should have some form of lessened PEG requirements, for example, if "technical and cost constraints make it difficult or burdensome to deliver PEG channels only to certain areas within the open video system service territory." NOPR, at ¶ 58. There is an easy answer to this question on which almost all the comments agree -- there are no such constraints.

The MIT Communities agree with these commentators and emphasize that the Act places a high burden (which the telephone companies have not met) of showing that it is "not possible" for them to meet local PEG requirements. To put it most simply, the cable companies have met local PEG requirements without difficulty for several decades. The cable companies started as "mom and pop" operations and overall still are only a fraction of the size of the telephone companies. As is set forth below, if these much smaller entities using old technology have met PEG requirements for decades it is clearly "possible" for the telephone companies using new and better technology to do so. Such slight inconvenience as it may cause them simply does not rise to the level of "impossibility" set forth in the Act.

D. Technical Feasibility: Cable operators have easily and successfully tailored their systems to carry different PEG channels in different franchise areas for years. They are able to do this readily using the older, coaxial analog systems.

Cable, video dial tone, or other multi-channel video systems being built today use some form of hybrid fiber-coax system. With these systems, each node serves a few hundred homes (from 250 to 500 typically). With nodes of this size it is much easier than with older technology to "narrow cast" PEG channels to specific areas simply by proper adjustment of the nodes and the homes they serve. An excellent example of this point is the cable system being built by Ameritech to serve the Detroit metropolitan area (comprised of approximately 70 separate communities). Ameritech has stressed to each of the communities it has approached its enhanced ability -- assured by the hybrid fiber-coax node architecture it uses -- to ensure that each subscriber receives the PEG channels corresponding to its local jurisdiction. As a result, for example, Ameritech's April 1, 1996 cable franchise with the City of Garden City, Michigan expressly provides that

"The nodes shall be so arranged, or if necessary rearranged, so that the subscribers served by each correspond with both the corporate boundaries of counties, cities, villages and townships (including those of City) and school district boundaries such that each individual subscriber receives only the PEG or other local channels corresponding to the county, city, township, village and school district in which that subscriber is located."

The key to the preceding is the arrangement or rearrangement of nodes so that the homes served are all within the same municipality and school district. In fact, MIT Communities point out that hybrid fiber-coax node architecture reduces, in some instances, the PEG channels that must be carried. This occurs where (as in Michigan and many other states) a city, village or township is served by multiple school systems, each of which has its

own educational channel. Because of the high capacity of the fiber backbone that connects the various nodes and video distribution centers, a given channel (say Channel 7) can be the educational channel throughout a city. A given school system's programming is then delivered on Channel 7 solely to the homes physically located in that school district. Homes located in an adjacent school district (even if within the same city) will receive on Channel 7 the educational programming from their school system because the nodes and homes they serve have been appropriately arranged, and so on.

This "channel reuse" by allowing multiple school systems to geographically share a given educational channel -- with each cablecasting only to homes in its district -- thus frees up channel capacity compared to the current situation where with older, traditional cable systems, each separate school system may have its own channel (for example, Channels 7, 8 and 9 if a community is served by three different school systems) in order to ensure each subscriber receives the educational channel from the school district in which they reside.

E. No Evidence Supporting Impossibility: No evidence was submitted in the initial comments in this docket showing that it was not "possible" (the statutory test) to deliver PEG or other local channels to specific franchising authorities (or subunits within them) as cable operators are doing at the present time. Indeed, the evidence is entirely on one side: The comments of the Alliance for Community Media (together with the attached declarations from Time-Warner employees and former FCC staffers) show that it is "technologically simple" to provide such signals on a franchise authority by franchise authority basis. Alliance for Community Media comments at 30-34 and Appendices B and C. The National League of Cities agrees -- see their comments at pages 39-41.

The cable operators also agree. As TCI points out, its cable systems -- like most of those in the country -- serve multiple franchise areas. And TCI complies with the local PEG requirements for each of the franchise authorities it serves. Comments of TCI, at 18.

The preceding comments supplemented by the information submitted by MIT Communities above shows without question that an OVS operator can easily adjust its system to meet the PEG requirements of individual communities.

By contrast, the telephone companies, although expressing a desire for the least PEG requirements possible, have made no showing that it is not "possible" to meet the individual PEG requirements of local communities. See e.g., Comments of Bell Atlantic et. al., at 26-28. The comments of U.S. West suffer from the same deficiency. Comments of U.S. West, at 18.<sup>9</sup> To put it bluntly, the evidence is all on one side -- there has been no showing that there are any significant technological or cost constraints to prevent OVS operators from continuing to meet the individual PEG requirements of each local franchising authority where they serve. And there has been no showing that it is not "possible" to do so, which is the statutory test which must be met.

F. Policy Objectives: The preceding analysis is reinforced by the differing objectives at play here. OVS operators have a simple objective -- to maximize their profits.

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<sup>9</sup> In fact, the comments of U.S. West appear to be simply incorrect. It states that the FCC has allowed cable operators to work out PEG solutions on a system by system basis. This is simply untrue. To our knowledge, this Commission has had no involvement in PEG arrangements. By statute, PEG requirements are administered solely on a local basis. Where communities served by a given system choose to work together cooperatively this is an individual decision by each of the participating communities with no involvement by this Commission.

This is not the same as meeting community needs, which is the statutory test for PEG channels.

Congress deliberately struck a balance between the two in affirmatively requiring OVS operators to comply with PEG requirements. Congress recognized that there is a legitimate purpose in meeting community needs by carrying such things as City Council meetings, school board meetings and other public meetings live on PEG channels. This affords broad access to the organs of local government for the elderly, the homebound or others who are unable to attend such meetings in person. Similarly, local educational needs are met by residents receiving information from their school system. By contrast, residents in one city receive little or no benefit from being able to watch the City Council proceedings of another city which may be 40 or 50 miles away or receiving information from school systems which they cannot attend.

G. Franchise Fee Base: MIT Communities support the position set forth by National the League of Cities, the Alliance of Community Media and other commentators that the definition of "gross revenues of the operator for the provision of cable service" in the Act must be interpreted very broadly to assure, among other things, fair compensation and parity with the existing cable operator.

H. Grandfathered Franchise Fees: MIT Communities reply to the comments of the National League of Cities, City and County of Denver and others on franchise fee payments by supporting their position and noting the following elaboration.

The 1984 Cable Act in general limits the franchise fees to 5% but expressly "grandfathered" preexisting franchises with rates higher than 5%. See Cable Act §

622(g)(2)(B); 47 U.S.C. § 542(g)(2)(B). Such grandfathering is also addressed in Section 637 of the Cable Act which expressly grandfathers all franchise provisions in effect, on the effective date of the 1984 Act (October 30, 1984) “which relate to the designation use, or support for the use of channel capacity for public, educational, or governmental use” Communication Act § 637(a)(1); 47 U.S.C. § 557(a)(1).

The Commission should be aware that many pre-1984 franchises are still in effect, will be in effect for many years, and have franchise fee (or PEG support provisions) that are grandfathered under either or both of the preceding provisions. These include fees over and above the 5% amount and payments for PEG support that are not simply limited to the provision of capital equipment. Other provisions require the cable operator to affirmatively provide equipment, facilities, equipment operation, equipment, maintenance and training. In some cases, such pre-1984 franchises have a decade or more to run before they are up for renewal.

The Commission should make clear in its regulations that for such grandfathered franchises the OVS operator is subject to the same obligations for PEG support as the incumbent cable operator (unless such obligations are modified by mutual consent under the “negotiate” options of the match or negotiate choice outlined above).

In particular the Commission should expressly recognize that Congress’ intent was regulatory parity and a level playing field when it specified that the fee in lieu of franchise fees “shall not exceed the rate at which franchise fees are imposed on the incumbent cable operator.” Communications Act § 653(c)(2)(B). Although generally limiting such fees to a 5% maximum, Congress was understandably careful in 1984 to “grandfather” franchise fees

and PEG support fees in excess of this amount, as just described. The Commission should thus specify that the "rate" imposed on the incumbent cable operator is the effective rate actually paid by the cable operator, inclusive of the types of payments described above. And to aid in this computation, the cable operator must provide detailed information on the cost and value of the non-cash goods and services it provides (MIT Communities' suggested rules in Appendix 1 address this point).

MIT Communities submit that the preceding construction of the statute is the only one that makes sense in light of Congress' clear intent to both grandfather franchise fees in excess of 5%, yet have parity between the cable and OVS operators on franchise fee type payments.

I. Compatible Equipment: MIT Communities support comments from the Alliance for Community Media and others that the OVS operator must be responsible for taking the signal from the various PEG operators, converting it to a format appropriate for the OVS operator's system and transporting it to the OVS operator's head-end or other appropriate signal insertion point. Such conversion and transport is essential for PEG signals to be provided on an OVS system. These functions are currently performed by cable systems without any charge. Their performance by an OVS operator imposes minimal or no cost obligations given the extensive two-way capability designed into most OVS systems. As a practical matter, if OVS operators use a non-standard format they must convert much of their programming (not just PEG programming) into a format or media acceptable to their system.

In this regard, MIT Communities point out to this Commission that typically a PEG operator need only provide a 6 MHz NTSC signal to a "signal input point" (meaning a jack on the wall) at the operator's studio (or similar location, such as City Council chambers for televising City Council meetings). It is then the cable operator's responsibility with modulators, demodulators, lines or other equipment as may be necessary to transport the signal to the appropriate location and insert it for distribution to appropriate places on the cable system.

Cable operators have performed these functions for PEG channels for decades without any problem. It is essential that OVS operators have the same obligations. And The Commission should clearly specify that the OVS obligation should extend to the several signal input points which may be present for a given channel. For example, on a government channel, programming may originate much of the time from a studio in one city building, but City Council proceedings may be televised live from a different signal input point in the City Council chambers. Similarly, educational channels may generally originate programming from a school system's studio, yet athletic events may be broadcast live directly from signal input points located at the football field, baseball field, swimming pool or other venue where the event is occurring. Again, the OVS operator should duplicate any existing such signal input points.

J. PEG Equipment: As indicated in the comments of the Political Subdivisions of the State of Minnesota (at 7 and 8), the comments of the National League of Cities (at 34) and those of other commentators, the Commission's regulations implementing Section 611 of the Act must include requiring the OVS operator to provide PEG facilities and

equipment (under the “match” options) or their equivalent (under the “negotiate” option). MIT Communities support the comments of the National League of Cities in this regard (at 34) and that of the Minnesota Political Subdivision’s (at 7 and 8) and note the following.

The 1996 Act expressly specifies that Section 611 of the Cable Act (47 U.S.C. § 531) shall apply in accordance with Commission regulations. Section 611 not only addresses the cable channels to be provided for PEG but also addresses enforcement of provisions “for services, facilities or equipment” which relate to the PEG channels.

As is obvious, PEG channels cannot function without equipment and thus such equipment and facilities for PEG are commonly required in cable franchises. The House Committee Report expressly recognized this when it directed the Commission to impose regulations for PEG on OVS “that are equivalent to the obligations imposed on cable operators” and in the next sentence, the House Report expressly said:

“In considering how to implement the capacity services, facilities and equipment requirements for PEG use pursuant to paragraph (b)(1), the Committee intends that the Commission give substantial weight to the input of local governments. . . .” H.R. Rep. No. 104-204, 104th Cong. 2d Sess., 105 (July 24, 1995) [emphasis added].

Congress has made clear through the preceding statements that the PEG related obligations of the existing cable operator for facilities and equipment have to be met by the OVS operator as well. This makes sense because having a channel and having the facilities and equipment to program it go hand in hand.

K. Institutional Networks: MIT Communities support the comments of the National League of Cities (at 34) and others that the obligation of OVS operator to provide PEG channels and support includes the obligation to provide so-called institutional

networks, or I-NET's. See in this regard Section 611 of the 1996 Act, subsections (b) and (c) which treat I-NET's as a part of PEG channels. Institutional networks are increasingly important for units of government to interconnect government buildings with modern high-speed communications services. Providing such I-NET communications capability should pose no problem for common carriers which are in the business of providing that type of service.

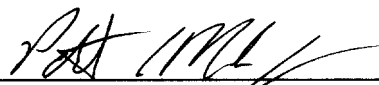
## **VI. CONCLUSION**

Accordingly, the MIT Communities respectfully ask this Commission to consider the foregoing as it develops open video system rules.

Respectfully submitted,

**VARNUM, RIDDERING, SCHMIDT & HOWLETT<sup>LLP</sup>**  
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April 10, 1996



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**EXHIBIT A**

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★ ★ MIDWEST EDITION

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NAPERVILLE, ILLINOIS

## Calls Waiting

### Rivals Are Hung Up On Baby Bells' Control Over Local Markets

#### Fight for Ameritech Territory By US Signal Illustrates Obstacles Carriers Face

#### 'Standing Up for Fair Rules'

By LESLIE CAULEY

Staff Reporter of THE WALL STREET JOURNAL

GRAND RAPIDS, Mich.—The color-coded maps pinned to office walls tell the story of US Signal Corp., which has struggled for more than a year to get a toehold in the local telephone market here.

"This is where we are," says Martin Clift, US Signal's director of regulatory affairs, as he points to a small patch of yellow covering 10 downtown blocks. "This is where we want to be," he adds as he motions to the entire 238-square-mile service area. "But they won't let us."

"They" are executives at Ameritech Corp., the Chicago-based regional Bell that holds a monopoly on service here in US Signal's hometown. US Signal says Ameritech has fought nearly every step of the way as the upstart tries to expand into this community of 500,000 in the heart of Ameritech territory.

US Signal hoped to cover half the city by now, but has been able to lease only about 1,700 of the thousands of lines it wants from Ameritech. For most of the past year, the Baby Bell has refused to let it branch out unless US Signal installs expensive gear US Signal says it doesn't need. The smaller rival accuses Ameritech of dragging its feet in processing orders, trying to levy bogus fees and refusing to refund \$240,000 for services it never provided. The bickering has cost US Signal more than \$1 million in legal fees — far more than the revenue it gets in the market. US Signal Executive Vice President Brad Evans says: "We are at the end of our rope."

Ameritech denies that it has treated US Signal unfairly.

#### Arsenal of Tactics

More than a decade after the federal government broke up the old AT&T empire, spinning off the seven Baby Bells to end anticompetitive behavior, the Bells employ an arsenal of tactics to keep competitors at bay. Rivals say the Bells have stalled negotiations, imposed arbitrary fees and set Byzantine technical requirements that jack up costs and cut profits.

"They can virtually make competitors' lives hell," says Terrence Barnich, formerly the top telephone regulator in Ameritech's home state of Illinois.

The Bells insist they play fair and say they have an obligation to protect their shareholders and the huge investments in their networks. While rivals often target only the most lucrative customers, the Bells alone have the responsibility to provide service for everyone, even the poorest and most hard-to-reach customers. It is critical, therefore, that new regulations don't unfairly favor newcomers merely for sake of encouraging competition, they say. "We don't believe standing up for fair rules is anticompetitive," says Thomas Reiman, an Ameritech senior vice president.

#### Racing to Deregulate

Now Congress is racing to deregulate the nation's telecommunications markets. Bills have cleared the House and Senate, and a conference committee is hammering out joint legislation. Passing a new law will be the easy part. Unraveling the government-sanctioned local monopolies — and ensuring that the Bells play by the rules — will be far more difficult.

"It will be extremely messy," says Eli Noam, director of the Institute of Tele-Information at Columbia University in New York. "It will take a long time for a new competitive equilibrium to be reached — if ever."

Congress wants to let the Bells enter the lucrative long-distance business after they meet a "checklist" showing their local markets are open to competition. Yet local service still provides more than 90% of their combined annual profits. Rivals fear the Bells will exploit vagueness in the legislation (what constitutes "fair" pricing and "timely" negotiations?) to protect their turf.

Ameritech, which serves a five-state region in the Midwest, takes pride in being the first Bell to embrace opening up the local monopoly. Its "Customers First" plan, unveiled two years ago, hailed "a fully competitive communications marketplace." It embodied the basic Bell pitch to Washington: We will let rivals in — if you let us into long distance. The Bells were banned from that market under the terms of the 1984 AT&T split-up.

#### Negotiating Ploy

But US Signal and other competitors say Ameritech fails to live up to its Customers First plan. The Baby Bell says it has treated US Signal fairly and rejects assertions that it drags out negotiations or hinders rivals. It says it tries to accommodate them as best as it can and that most complaints are a negotiating ploy.

"There are fundamental issues on which we aren't going to lie down and die, just for fear of being branded as anticompetitive," says Ameritech's Mr. Reiman. Steven Nowick, president of its long-distance unit, says rivals expect the Baby Bell to juggle "27 variations" of the same request. "There is a lot of complexity here. We're dancing as fast as we can."

Ameritech has abundant company in

Please Turn to Page A4, Column 3

# Baby Bells Squeeze Out Smaller Rivals

*Continued From First Page*

the litany of complaints lodged against the Bells. For example:

- Nynex Corp. last year touted itself as the first Bell to sign a contract letting a competitor hook up directly to its network. But last week the rival, Teleport Communications Group, asked New York state regulators to "investigate Nynex's attempt to stifle local telephone competition." The pact was supposed to be implemented within 60 days. Sixteen months later, most of the terms still haven't gone into effect.

Nynex denies the charges and accuses Teleport of "grandstanding." It also says the rival is behind in paying its bills, which Teleport denies.

- U S West Inc. of Denver tried to convince a rival—believed to be AT&T—that they should avoid each other's markets, a lawsuit in Delaware Chancery Court alleges. U S West denies the charge, leveled two weeks ago by its partner-turned-adversary, Time Warner Inc. AT&T declines to comment.

- In a complaint filed with the Justice Department this month, LCI International Inc., of Reston, Va., says U S West shut off service to 4,000 LCI customers in the Denver area, prompting 24% of them to cancel. It says U S West hurt LCI in several markets by failing to provide services as promised. When some customers called U S West to complain, they were told LCI had gone belly-up, the complaint says.

U S West concedes that "errors occurred" but says they were inadvertent.

- SBC Communications Inc., the San Antonio-based Bell, charges huge markups when selling network equipment to rivals, MFS Communications Co. of Omaha, Neb., contends. Other Bells let rivals buy gear elsewhere and pay the Bell to install it. SBC requires that they buy from SBC. It charges \$137,000 for a pair of "multiplexers" that usually cost \$67,000; and \$21,000 for running a cable that typically costs \$900, MFS claims.

SBC says it marks up prices by 25% at most, as allowed by federal rules. It declines to release any specifics and says its rates are confidential.

## Unequaled Power

Conflicts with the Baby Bells, however, underscore the unequaled power the Bells have in dealing with rivals. The Bells still lock up 98% of local revenues in their regions. That stems from their control over millions of phone lines that reach into homes and businesses — an infrastructure that took \$100 billion and most of the 20th century to put in place.

For new entrants, duplicating these "local loops" that run from Bell switching centers to customer sites would be financially impossible. So they try to lease Bell lines at "fair" rates, count on the Bells for seamless technical links and access to switching sites, and depend on them to fix things when service goes down.

That sparks clashes on seemingly small items. Teleport, which serves business customers, accuses Nynex of hoarding phone numbers. In a complaint to the Federal Communications Commission last week, Teleport, of Staten Island, N.Y., says it asked the Bell for 60,000 numbers in Manhattan's 212 area code but got just 20,000. Some big accounts can use 5,000 at a crack. It sought an additional 20,000 numbers in the Bronx but says Nynex refused to provide them until Teleport installs an unneeded switch at Nynex's Bronx site.

Nynex's director of regulatory planning, Larry Chu, questions whether Teleport "really needs" 60,000 numbers in Manhattan. He says the Bronx incident was a "misunderstanding."

## 'Interconnect' to Network

If a newcomer wants to sidestep Bell lines and partner up with, say, the local cable-TV system, it still must "interconnect" to the Bell network so calls can go through. In negotiating interconnection agreements, rivals say the Bells often drag out the talks to thwart them. Only a few deals have been reached.

Most Bells won't let rivals near their own equipment once it is installed, unless they have a Bell escort. That adds to rivals' expenses and ensures that the Bells know exactly what the newcomers are up to.

When a Bell installs a rival's gear, it charges rent for the space the electronic boxes occupy. The fees "can be more expensive than a penthouse at Trump Tower," quips Andrew Lipman, an MFS senior vice president. Setting up in a 10-by-10-foot space, cordoned off with chain-link fencing, can run \$60,000 up front, plus charges for power, cabling and rent that can add up to \$2,000 a month.

Once inside, rivals don't exactly get the welcome mat. Bell Atlantic Corp. employees in Philadelphia once refused to let MFS workers use the restrooms because they weren't required to by the FCC. "To us, that epitomized the kind of obstacles we face every day," MFS's Mr. Lipman says.

Bell Atlantic spokesman Eric Rabe responds: "I'm sure when Wendy's shows up next to McDonald's, they don't exactly roll out the red carpet. That's the nature of competition." He says the company is getting better at working with rivals.

## AT&T in Chicago

Even giants haven't fared well in negotiating with the Bells. AT&T, one of the world's most powerful telecommunications companies, has been trying to break into the Chicago market under Ameritech's Customers First plan since last spring, to no avail.

AT&T says Ameritech won't disclose where "conduit space" is available for AT&T to install new lines, thereby hindering AT&T in designing its network. The long-distance giant has resorted to having its engineers walk the streets, peeking under manhole covers to find the space.

Although AT&T had hoped to launch local service later this fall, it now says it doesn't know when it will proceed.

"This process just hasn't worked," says William Clossey, an AT&T regional vice president.

Tom Hester, Ameritech's general counsel, says of AT&T: "Here they are, one of the world's largest corporations with a tin cup expecting us to fill it up."

US Signal had hoped to avoid such experiences in Grand Rapids. Local entrepreneur Ron VanderPol founded the closely held company in 1983, aiming to get into long distance in the wake of the AT&T split. US Signal now derives about \$80 million a year in long distance, mostly in Ameritech's region. It figured its hometown would be the perfect place for getting started in local service.

The city ostensibly was one of the nation's most open local phone markets. A 1992 state law—supported by Ameritech—required local phone companies to let rivals hook up to their networks.

## 'Major Hurdles'

US Signal filed for state approval as a local carrier in April 1994 and planned to offer service by the fall. But after US Signal's first meeting with Ameritech later that month, "we knew we had major hurdles," US Signal's Mr. Cliff says.

The Bell balked at leasing out any of its phone lines, depriving US Signal of a way to reach customers.

Ameritech negotiators also wanted to charge US Signal \$4.40 per name to list customer phone numbers in Ameritech directories. Yet US Signal says the Bell pays phone companies in adjacent areas 30 cents apiece to list the other companies' customers' numbers.

US Signal also says Ameritech refused to refund \$240,000 that it had paid it to install gear in five switching sites. The gear was never put into place. Ameritech says it spent the money preparing the sites, then decided against installing the equipment. It did so after a federal appeals court in Washington struck down FCC rules ordering the Bells to let rivals install and maintain their own gear.

## New Prices and Terms

In August 1994, US Signal formally complained to Michigan regulators. In February, regulators ordered Ameritech to file new prices and terms for interconnection agreements.

Ameritech did — five times in the succeeding eight months. State officials rejected all of the proposals. A sixth attempt, filed this month, is under review. Representatives of the Michigan Public Service Commission say Ameritech tried to set exorbitant prices, dictate how rivals must set up their networks, and impose charges the state doesn't allow.

For example, Ameritech proposed charging rivals \$20.37 a month plus 8.2 cents a call for a customer who wanted to leave Ameritech but hold on to the old phone number.

Regulators ordered Ameritech to reduce that monthly fee to about a dollar.

After pressure from state officials, Ameritech made a new offer to US Signal: Set up your network the way you want, but we will lease you only 96 lines per switching site — instead of the thousands per site that US Signal wanted. Do it our way, Ameritech said, and you will get as many lines as you want. "We just couldn't possibly believe they were serious," Mr. Clift says. "But they were."

#### **Trial Basis**

This month, Ameritech backed down a bit. It dropped its demand for extra fees for directory listings. The Bell also agreed to lease all the lines US Signal wanted, regardless of how US Signal set up the network. Just one catch: This will be on only a six-month trial basis, leaving the Bell free to rescind the deal next year.

Two weeks ago, Ameritech filed a motion in the Michigan court of appeals, challenging the authority of regulators and legislators to force the Bell to open up its network. That seems to fly in the face of the company's self-styled image as a crusader for competition in the local phone business. "I don't really understand it," says Mat Dunaskiss, a state senator who helped draft the open-market law. He calls the Bell's action "a step backward."

Ameritech says it filed because it felt regulators "went beyond their authority" in ordering the Bell to provide rivals with connections that Ameritech says are priced below its costs. But Ameritech says it still supports "full and fair competition."

US Signal argues otherwise. One day earlier this month, the tiny rival was besieged with complaints from dozens of customers who kept getting rapid busy signals when they dialed. Engineers checked the system and concluded that Ameritech hadn't set up enough lines to handle the calls.

#### **Customer Threats**

Mr. Clift says Ameritech readily conceded its error and took care of the problem, which Ameritech says also affected its customers that day.

Customers are beginning to blame US Signal for the foul-ups, even though the company has no control over such matters. "Customers say it's our fault, and let us know they never had these problems with Ameritech," says Mr. Clift, who worries some will make good on their threat to go back to the Bell.

"They haven't left us yet," he says with a sigh. "But they're threatening."

**EXHIBIT B**